IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1296 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULAMMINYA HASUMINYA DECEASED THROUGH HIS HEIRS

Versus

SAKHAVATKHAN MOHMADKHAN DECEASED THROU LEGAL HERIS

Appearance:

MR SURESH M SHAH for Petitioners

MR ARUN H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision:__ /10/2000

CAV JUDGEMENT

This is a Civil Revision Application under Sec.29(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 (for short the "Act"), filed by the original defendant challenging the correctness, legality and propriety of judgment dt. 14th September, 1987

rendered by the Appellate Bench of the Small Causes Court at Ahmedabad in Regular Civil Appeal No. 143 of 1981, whereby the said Appellate Bench was pleased to dismiss the appeal filed by the original defendant and confirm the judgment Ex.46 dt. 25th March, 1981 rendered by the learned Judge of the Small Causes Court, Court No.12 at Ahmedabad (who will be referred to hereinafter as the learned Judge of the trial Court) in H.R.P.Suit No. 4896 of 1977.

2. Here in this Civil Revision Application, Revision Petitioner was an original defendant and Revision Opponent was an original plaintiff in the suit being H.R.P.Suit No. 4896 of 1977 before the trial court, and therefore, for the sake of convenience, parties will be referred to as plaintiff and defendant respectively at appropriate places.

3. The facts leading to this present Civil Revision Application, in a nutshell, are as follows:-

The plaintiff is an owner of suit property bearing Municipal Census No. 448/21 situated in Doctor's Chawl, Gomtipur near Usha Talkies in the City of Ahmedabad. When plaintiff purchased the said suit property, the defendant was already therein as a tenant in the said suit property. After purchase of suit property by the plaintiff, he informed about the suit property having been purchased by him to the defendant. It is the case of the plaintiff that defendant is a tenant in the said suit property for monthly rent at the rate of Rs.10/- and tenancy month is according to English Calendar month. It is the case of the plaintiff that defendant is a tenant in arrears of rent for more than six months and that defendant has neglected to make payment of such rent due for more than six months within one month after service of suit notice u/s. 12(2) of the Act. As per the case of the plaintiff, as on date of notice dt. 22nd September, 1977, defendant was in arrears of rent for the period from 7th October, 1974 to 21st September, 1977. Therefore, he, by addressing a suit notice dt. 22nd September, 1977, terminated the tenancy of the defendant and called upon the defendant to hand over the possession of the suit property. On receipt of suit notice, the defendant replied the said notice and in that reply, he denied the title of the plaintiff over the suit property, and thereby the defendant has committed a breach of terms of tenancy, and therefore, also defendant is not entitled to retain possession of the suit property. Thereafter, plaintiff filed H.R.P.Suit No. 4896 of 1977 in the Court of the

learned Judge of the trial Court on or about 1st December, 1977, wherein he prayed for a decree of eviction of defendant from suit property directing the defendant to hand over the possession of said suit property and also for a money decree to recover Rs. 368/- being an amount of arrears of rent calculated for the period from 7th October, 1974 to the date of the suit. He also prayed for other consequential reliefs in that suit.

4. The defendant appeared and contested the suit by filing his written statement Ex.13, wherein he has practically denied all the pleadings of the plaintiff pleaded in the plaint of the suit. In written statement also, the defendant has contended that the plaintiff is not his landlord and there is no relationship of the landlord and tenant between plaintiff and himself and hence the plaintiff has no right to file the suit. As per the case of the defendant, the previous owners were Shri Yadukant S.Dave and Chandrakant S. Dave and that previous owners have not given him any attornment notice either oral or in writing. It is his case that he is a tenant of Yadukant S. Dave, and therefore, plaintiff is not entitled to claim any amount as rent from him. It is his further case that as the plaintiff gave a false notice, he filed one Civil Misc. Application No. 3784 of 1997 for fixation of standard rent against said Yadukant S. Dave and Chandrakant S. Dave and also against the present plaintiff. He is depositing rent in Court in connection with proceeding of that application. He has taken a dispute with regard to standard rent of suit property and as per his case, standard rent deserves to be fixed at Rs.5/- per month. Lastly, defendant requested the learned Judge of the trial Court to dismiss the suit of the plaintiff with costs.

5. From the pleadings of both the parties, the learned Judge of the trial Court framed issues at Ex.15. By keeping in mind the issues framed at Ex.15, both the parties led their oral as well as documentary evidence in the trial Court. Thereafter, after hearing the arguments of the learned advocates for both the parties and after appreciating the evidence led by both the parties, the learned Judge of the trial Court was pleased to come to a conclusion that the plaintiff has proved that there has been a relationship of landlord and tenant between the parties to the suit. He has further held that the Court has jurisdiction to entertain and decide the suit of plaintiff. He has further been pleased to hold that the defendant is a tenant-in-arrears of rent for more than six months and he i.e. defendant has neglected to make

payment of such arrears, and therefore, defendant is a defaulter and he is liable to be ejected on that ground. He has also been pleased to hold that contractual rent at the rate of Rs.10/- is not excessive and ultimately, he was pleased to fix the standard rent at the rate of Rs.10/- per month. For an important issue with regard to denial of title of plaintiff by defendant, he was pleased to answer Issue No. 4 in the affirmative saying that there has been a denial of title of plaintiff by the defendant and thus, the learned Judge of the trial Court rendered his judgment Ex.46 on 25th March, 1981 and allowed the suit of the plaintiff granting a decree of eviction in favour of plaintiff directing the defendant to hand over vacant and peaceful possession of the suit property to the plaintiff latest by 30th June, 1981. Defendant was also directed to make payment of mesne profits at the rate of Rs.10/- per month for the period from the date of the suit till possession is handed over. He also fixed the standard rent of the suit property at the rate of Rs.10/- per month. He also passed a money decree in favour of plaintiff to recover Rs. 360/- being an amount of arrears of rent from defendant.

6. Being aggrieved against and dissatisfied with the said Judgment Ex. 46 dt. 25th March, 1981 of the learned Judge of the trial Court, original defendant preferred an appeal bearing Civil Appeal No. 143 of 1981 to the Appellate Bench of the Small Causes Court at Ahmedabad. The learned Judges of the Appellate Bench of the Small Causes Court at Ahmedabad heard the arguments of the learned advocates of both the parties, perused record and proceeding of suit and after appreciating the evidence led by both the parties, they rendered their Judgment dt. 14th September, 1989 in Civil Appeal No. 143 of 1981. By that judgment, Appellate Bench was pleased to dismiss the appeal preferred by the original defendant and thereby the Appellate Bench confirmed the judgment of the learned Judge of the trial Court which was challenged in that appeal.

7. Being aggrieved against and dissatisfied with the said judgment dt. 14th September, 1989 of the Appellate Bench of the Small Causes Court at Ahmedabad rendered in Civil Appeal No. 143 of 1981, the original defendant had preferred this Civil Revision Application. During the pendency of this Civil Revision Application, original revision petitioner died and therefore his heirs and legal representatives are brought on record vide order dt. 19th April, 1999 passed in Civil Application No. 12178 of 1998. Likewise the original revision opponent i.e. plaintiff also died during the pendency of this

present Civil Revision Application, and therefore, heirs and legal representatives of deceased revision-opponent i.e. plaintiff are brought on record vide order dt. 29th June, 1998 passed in Civil Application No. 12062 of 1997.

8. I have heard Shri S.M.Shah, the learned advocate for the revision petitioner and Shri A.H.Mehta, the learned advocate for the revision opponent. Shri S.M.Shah, learned advocate for the revision petitioner has produced certain documents in bunch so as to enable this Court to refer that documents at the time of arguments.

9. Originally, the plaintiff filed H.R.P.Suit No. 4896 of 1977 for eviction decree to get possession of suit premises, from defendant only on two grounds -

(i) That defendant has denied title of plaintiff who is an owner of the suit premises;

(ii) That the defendant is a tenant in arrears of rent for more than six months and that he has neglected to make payment of such rent due within one month from the date of receipt of the notice under Sec. 12(2) of the Act.

For first ground relating to denial of title of the plaintiff, the learned Judge of the trial Court answered Issue No.4 in affirmative accepting the case of the plaintiff. For second ground with regard to case falling under Sec.12(3)(a) of the Act, the learned Judge of the trial Court also accepted the case of the plaintiff by answering Issue No.3 in affirmative in favour of the plaintiff and thus on aforesaid two grounds, the learned Judge of the trial Court passed a decree of eviction in favour of plaintiff directing the defendant to hand over the vacant and peaceful possession of the suit premises to plaintiff latest by 30th June, 1981.

10. On appeal being filed by the defendant/tenant, the learned Judge of the Appellate Bench, by dismissing Civil Appeal No. 143 of 1981 filed by the defendant/ tenant confirmed the judgment rendered by the learned Judge of the trial court. The learned Judges of the Appellate Bench by accepting the case of the plaintiff, on the aforesaid two grounds, dismissed the appeal of the defendant/tenant.

11. To understand the case of the plaintiff with

regard to denial of title of the plaintiff by defendant, easily some facts are required to be kept in mind, while dealing with the subject on first ground stated hereinabove.

(i) Originally, the property bearing Municipal Census No. 448/21 situated in Doctor's Chawl, Gomtipur, near Usha Talkies in the City of Ahmedabad was of joint ownership of Ydukant Sarjantray Dave and Chandrakant Sarjantray Dave.

(ii) The defendant had already been inducted as tenant for monthly rent of Rs.10/- of the suit room described in Para 6A of the plaint by said two original owners of the property, before present plaintiff purchased suit property in 1974.

(iii) The plaintiff purchased the suit property by registered document Exh.35 from said two owners on 7/10/1974.

(iv) As per the case of the plaintiff, defendant was a tenant in arrears of rent for the period from 7/10/1974 to 31/10/1977 i.e. for 36 months.

(v) The plaintiff addressed a notice Ex.31 dt. 22/9/1977 to defendant and terminated tenancy of the defendant.

(vi) The defendant, by his reply Ex.38 dt. 19/10/1977, denied the title of the plaintiff for suit property, and therefore, by taking this ground of denial of title by defendant, as one of the grounds, plaintiff filed the suit for eviction on 1/12/1977. Defendant appeared and contested the suit by filing his written statement Ex.13.

12. Shri S.M.Shah, the learned advocate for the revision petitioner i.e. defendant/tenant, has argued that for plaintiff, it cannot be gainsaid that defendant is a tenant since many years before he purchased the suit property from original landlords, and therefore, before purchase of the suit property by plaintiff, neither the plaintiff was a lessor of the defendant, nor defendant was a lessee of the plaintiff. Shri S.M.Shah, the learned advocate has further argued that in view of this fact, after purchase of the suit property by plaintiff, as alleged by plaintiff, on 07-10-1974, the original lessors i.e. the persons who sold the suit property to plaintiff at the time of transferring the property, were

legally duty bound to give attornment notice under Sec.109 of the Transfer of Property Act, 1852 (for short " T.P.Act") to defendant. Sec.109 of T.P.Act reads as follows:

Sec.109 -

Rights of lessor's transferee.- If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased."

13. First part of Sec.109 the T.P.Act deals with rights and liabilities of the transferee i.e. party who purchases the property. This first part of Sec.109 says nothing about lessee of the original lessor i.e. transferor.

The second part of Sec.109 of the T.P.Act which is a proviso to first part of Sec.109 deals with a right of transferee to recover rent due for the period prior to transfer of it from the lessee and it also makes it clear that if lessee who has no reason to believe that such transfer has been made, pays rent to the original lessor, the lessee cannot be held liable to pay such rent over again to the transferee. So far as this present case is concerned, proviso i.e. second part of Sec.109 is very much important to decide this case.

14. On reading Sec.109 of T.P.Act, it appears that said Sec.109 creates a statutory attornment which substitutes, and the same effect as contractual attornment, so that because of a transfer of the leased property or part thereof, the transferee ipso facto acquires " all the rights" of the lessor, and a new relationship is created between the transferee and the lessee. Letter of the attornment is not necessary to complete title to the assignee of the reversion under Section 109. Title of the assignee is complete on the execution of the deed of assignment and is not postponed till the notice of the assignment.

14. Here in this case, it is an admitted fact that plaintiff purchased suit property by a registered sale deed from its original owners on 7/10/1974. Sec.109 of the T.P.Act does not impose any obligation on the lessor or transferor to give notice of transfer to the lessee. It only provides that if the lessee, " not having reason to believe" that such transfer has been made, pays rent to the lessor, he shall not be liable to pay it over again to the transferee. If the lessee knows about the transfer, his payment of rent to the lessor with the knowledge of the transfer does not protect him against the liability to pay it over again to the transferee.

15. Looking to this legal position, if defendant/ tenant had reason to believe that such transfer has been made by original owners of the suit property in favour of plaintiff on or about 07/10/1974, then defendant/tenant cannot take any dispute with regard to non receipt of notice of attornment by taking shelter of Sec.109 of the T.P.Act. Shri S.M.Shah has read before me an evidence of defendant whose evidence was recorded at Ex.40 in the suit. His deposition was recorded on 9/3/1981 and he has deposed in Para 1 of his examination-in-chief that he is a tenant in the suit premises since last 14 years. Thus, his case is that he is a tenant in suit property since 1967. It is his contention that original owners of the suit property have not given any notice of attornment to him for property sold to plaintiff, and this contention has been taken by him for his defence as against the case of plaintiff for denial of title of the plaintiff pleaded against defendant in plaint. In cross-examination, defendant has admitted in unequivocal words that " he came to know one or two months after purchase of property by plaintiff, that plaintiff has purchased the said suit property ". So as per proviso to Sec.109 of T.P.Act, it cannot be said that defendant being lessee was not having reason to believe that such transfer has been made, and therefore, looking to the requirements stated in Sec.109

of the T.P.Act, it was not necessary for the plaintiff to see that original owners must give a notice of attornment to the defendant on property being purchased by plaintiff, particularly when defendant had already come to know about that fact of purchae of property by plaintiff within one or two months after the date of purchase of the property by plaintiff. Hence, the learned Judges of the Appellate Bench have rightly accepted the case of the plaintiff that there has been a relationship of landlords and tenant between the parties of the suit.

In the background of aforesaid legal position with regard to notice of attornment, question with regard to denial of title can be dealt with easily. There is no provision with regard to denial of title either in the Transfer of Property Act or in the Bombay Rent Act, 1947. The relevant provisions with regard to denial of title is found in Sec.116 of Indian Evidence Act, 1872 (for short " Indian Evidence Act"). Sec.116 of the Indian Evidence Act reads as follows:-

Section 116 :-

" Estoppel of tenant and of licensee of person in possession.- No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given."

16. Shri S.M.Shah has by reading Sec.116 of Indian Evidence Act argued that lessee can deny title of the person who claims his title through the original owner of the property i.e. the original lessors of the defendant. He has put much emphasis on the words "during the continuance of the tenancy " used in Sec.116 of the Indian Evidence Act and then strenuously argued that so far as this cae is concerned, defendant has denied that plaintiff has become an owner of suit premises as alleged by plaintiff, under a sale deed dt. 7/10/1974. In support of his arguments, he has cited one authority of KUMAR KRISHNA PROSAD LAL SINGHA DEO VS. BARABONI COAL CONCERN, LTD. AND OTHERS, reported in A.I.R. 1937 Privy Council P. 251, wherein it has been held that the tenant

is not precluded from denying the derivative title of the persons claiming through the landlord. Shri Shah has argued that here in this case, plaintiff has come with a case that he derived title in the property by purchasing suit property from original owners i.e. original lessors of the present defendant being lessee. He has also cited one another authority of D.SATYANARAYANA Vs. P. JAGADISH reported AIR 1987 SUPREME COURT, P. 2192, wherein it has been held that-

"Sec.116 of the Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. Estoppel under S.116 of the Evidence Act is restricted to the denial of the title of the landlord at the commencement of the tenancy. From this, the exception follows, that it is open to the tenant even without surrendering possession to show that since the date of the tenancy, the title of the landlord came to an end or that he was evicted by a paramount title holder or that even though there was no actual eviction or dispossession from the property, under a threat of eviction he had attorned to the paramount title holder."

He has also cited a case of C.CHANDRAMOHAN VS. SENGOTTAIYAN (Dead) BY L.Rs.AND OTHERS, reported in AIR 2000 SUPREME COURT 568. In this cited case, the appellants before the Hon'ble Supreme Court, appellant was the landlord, whereas the respondents were the tenants of three shops. The father of original plaintiff late Chockalingam was the owner of three shops. Out of three shops, one shop was leased to T. Subramaniam at the rate of Rs.75/- per month. Another shop was leased to M. Sengottaiyan who died during the pendency of the proceedings and therefore, his legal representatives were brought on record as respondent nos. 2 to 6 and third shop was leased to Nachimuthu at the rate of Rs.200/- per month. On or about 8th June, 1978, said original owner Chockalingam executed release deed in favour of appellant i.e. plaintiff of the suit, and thus he became the absolute owner and landlord of the premises. The plaintiff issued notice to three tenants stating that the premises were required for demolition and reconstruction

and asking them to vacate the same. The defence taken by tenants in reply to said notice was to the effect that plaintiff was only a co-owner as the original landlord (Chockalingam) died leaving behind him three daughters and a widow also, and therefore, he could not seek eviction for demolition and reconstruction of the premises. Thereafter, plaintiff filed three eviction petitions under Sec.10(2) and 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) mainly on three grounds namely (i) wilful default in payment of rent; (ii) for demolition and reconstruction of the premises and (iii) denial of the title of the landlord. The Rent Collector allowed eviction petitions by order dated 09-04-1992. Thereafter, appeals were preferred before the Appellate Authority. Appellate Authority confirmed the order of the Rent Collector on the point of denial of the title. Thereafter, the tenants preferred three revision petitions to the High Court of Madras. The High Court of Madras set aside the order of eviction passed against the tenants. Therefore, the landlord preferred Civil Appeals to the Hon'ble Supreme Court. On the point of denial of title, the Hon'ble Supreme Court has observed in Para 17 that-

" To constitute denial of title of the landlord, a tenant should renounce his character as tenant and set up title, or right inconsistent with the relationship of landlord and tenant, either in himself or in a third person. In the case of derivative title of the landlord, in the absence of a notice of transfer of title in favour of the landlord or attornment of tenancy, a tenant's assertion that the landlord is a co-owner does not amount to denial of his title, unless the tenant has also renounced his relationship as a tenant. The principle of equity that a person cannot approbate and reprobate finds legislative recognition in Section 116 of the Evidence Act and Section 111(g) of the Transfer of Property Act".

In para 18, the Hon'ble Supreme Court has further observed that-

" When a notice was issued by the appellant to the respondents seeking eviction of the premises for its demolition and reconstruction, the respondents replied that he was not the absolute owner of the property since late Chockalingam had also left behind him three daughters and a widow. In their counters, the respondents reiterated the

said plea and added that they were unaware of the execution of release deed in favour of the appellant by late Chockalingam and that they had been paying monthly rent to him and that the denial of absolute title of the property was not wilful and mala fide, as alleged in the petitions. Now, in this background, when we consider the conduct of the respondents that from the date of the said reply notice (Exhibit P-18) the respondents neither denied the relationship of landlord and tenant nor did they stop paying rent to the appellant nor did they set up any claim adverse to title or interest of the appellant in themselves or a third party and that after coming to know of the said release deed in favour of the appellant they did not persist in their plea that he was a co-owner, it cannot be said tat the respondents denied the title of the appellant, much less can it be said at such a denial was not bona fide."

In Para 19, the Hon'ble Supreme Court has specifically held that -

" The High Court is right in coming to the conclusion that but for the release deed the appellant would be a co-owner and so the respondents were justified in calling the appellant as a co-owner for lack of knowledge of the release deed and that the appellant failed to make out a case of denial of his title to the premises by the respondents."

17. This authority is on the contrary helpful to the plaintiff in present case. In this case, defendant has categorically stated in his evidence that since about two months after the date of purchase of suit premises by plaintiff, he has come to know that plaintiff has purchased that suit room. In aforesaid case of C.Chandramohan (supra), there was a lake of knowledge of the release deed on the part of defendants, and therefore, the Hon'ble Supreme Court accepted the case of the defendants that appellant has failed to make out a case of denial of title of the premises by respondents. It may be noted that here in this case, plaintiff addressed a notice Ex.31 dt. 22/9/1977 to defendant and informed him about suit property purchased by him by sale deed from original owners. In Para 3 to reply of defendant to the notice (Ex.38) dt. 19/10/1977, defendant has not denied that title of the plaintiff in

the suit property, but he has stated that he has no knowledge as to since when plaintiff has become an owner. For this he has assigned reason that original owners have not given a notice of attornment to him. On reading that reply to notice Ex.38, from the language and tenure of the reply, it can be said that defendant has advanced his case only for failure of giving attornment notice to him by the original owners. He has not denied title of the plaintiff in the suit property. This reply Ex.38 should not be read in piecemeal but it should be read as a whole and on reading all the contents of reply Ex.38, we find that it is the case of defendant that plaintiff cannot become an owner of suit property as sale deed is void. Thus, on reading Ex.38, it clearly appears that he has not denied title of the plaintiff which he derived from the original owner by the sale deed. The only contention taken by defendant is with regard to failure of giving notice of attornment to him by original owners and nature of sale deed which is registered one is a void agreement. In view of what is deposed to by defendant in his evidence, and on reading his written reply Ex.38, it is certain that defendant has not denied the title of the plaintiff in the suit property. For the first time, when defendant filed his written statement on or about 2nd May, 1978, he denied that plaintiff is not a legal owner of the suit property. This Court is of the view that considering the conduct of the defendant that for the first time when he replied the notice of the plaintiff, he did not deny the title of plaintiff but he denied only date of purchase and challenged legality of sale deed. Till then, there was no dispute for title of the plaintiff in the suit property from the side of the defendant, and therefore, this Court is of the view that when defendant replied notice Ex.31 dt. 22/9/1977 by his reply Ex.38 dt. 19/10/1977, he accepted the plaintiff as an owner of the property. But subsequent act of defendant denying the title of plaintiff in written statement Ex.13 attracts the provisions of Sec.116 of the Indian Evidence Act. His contention with regard to denial of title is not bonafide contention. He has admitted in his evidence that in fact he wanted to purchase the suit property, but as the plaintiff purchased the suit property, he would not have paid the rent, if the plaintiff would come to him to collect the rent.

19. As per case of C.Chandramohan (supra) cited by Shri S.M.Shah, the learned advocate for the revision petitioner, the defendant has not set up any claim adverse to the title of plaintiff as owner or third party. Here in this case, it is not the case of

defendant that he is an owner of the suit property. It is not the case of defendant that owner of the suit property is Markandray.

20. As discussed earlier, defendant preferred Standard Rent Application No. 3784 of 1977 on 24/10/1977 and in that application, he did not seek any order from the Court for deciding a question as to whom he should pay the rent. In that Rent Petition, present plaintiff was shown as one of the opponents and therefore when he joined plaintiff as one of the opponents in that rent petition, it can safely be said that he half-heartedly accepted the plaintiff as his landlord and his such act of filing Rent Petition by defendant shows that he had only problem that as to whom he should pay the rent, because he has already come to know that plaintiff has purchased the suit property from the original owners and that too much prior to filing of that Rent Petition. As per evidence of defendant, he had come to know about purchase of the suit property by plaintiff around 7/12/1974 and he filed that Rent Petition after about three years. During these three years, he did not file any suit of interpleader under Order 35 of the C.P.Code. This fact shows that he accepted the plaintiff as an owner of the suit property but anyhow when he realised that in reply Ex.38, he has not denied the title of the plaintiff in suit property, he for the first time took a dispute with regard to title in suit property in his written statement Exh.13 filed in the suit on or about 2/5/1978.

21. In view of the discussions made hereinabove, though a tenant can take a dispute for title of ownership in the suit property of a person who has derived title from the original owner, looking to the facts and circumstances of this present case and evidence of defendant and his conduct, this Court is of the view that at the first instance, defendant accepted the plaintiff as an owner of the suit property but subsequently he took a dispute in his written statement, and therefore, Sec.116 of the Indian Evidence Act is applicable to this present case as plaintiff has satisfactorily proved the case advanced in plaint that defendant has denied the title of the plaintiff. It may be noted that both the Courts below have come to this finding on fact, consistently and concurrently and in view of the discussions made hereinabove, this Court finds that said finding cannot be said to be "not according to law" in any manner.

22. Sec.116 of the Evidence Act inter alia precludes

a tenant from denying a title of his landlord at the commencement of tenancy. There is no estoppel therefore against tenant to deny title of his landlord at some time prior to the commencement of tenancy or to deny title of property in interest of landlord. The words "at the beginning of the tenancy" in Sec.116 of the Evidence Act ought not to be construed in a limited way. A new tenancy may begin though tenant has been in possession prior to the tenancy. It may begin by granting of a lease by a landlord or it may begin attorning to a new landlord.

23. Here in this case, admittedly defendant is a lessee since 1967. Plaintiff purchased the suit property by registered sale deed from original owner of the property on 7/10/1974. Now as per evidence of defendant, he has admitted in his evidence that a fact with regard to purchase of suit room by plaintiff had come to his knowledge after one or two months and that too, he came to know that plaintiff has purchased that room, meaning thereby, the defendant came to know about purchase of suit room by plaintiff around 7/12/1974. Admittedly, the rent was due for the period from 7/10/1974 to 31/10/1977. Plaintiff has claimed arrears of rent for the period from 7/10/1974 to 31/10/1977, meaning thereby, defendant had already paid rent for the period prior to 7/10/1974 for which original owners were entitled to recover the same from the defendant. Plaintiff purchased the suit property by registered sale deed on 7/10/1974 and therefore it can well be inferred that defendant was in know of the fact that plaintiff has purchased the suit property from its owner on 7/10/1974. Defendant has admitted in his evidence that rent was due for suit room for the period of last eight months immediately before the date of purchase of suit property by the plaintiff. Therefore, rent was due from defendant for the period from 7/2/1974. Plaintiff has not claimed any rent for the period prior to 7/10/1974 because he became an owner of the suit property by registered sale deed on 7/10/1974, and therefore, he has claimed rent for the period from 7/10/1974 to 31/10/1977. Though defendant was in know of the fact that plaintiff has already become an owner of the suit property by purchasing it from its original owners by registered sale deed on 7/10/1974, he did not make any attempt to pay the arrears of rent for the period prior to 7/10/1974 to its original owners and for the period subsequent to 7/10/1974 to the plaintiff. Under these circumstances, plaintiff addressed a suit notice Ex.31 dt. 22/9/1977 terminating the tenancy of the defendant. The defendant replied that notice by his reply dt. 19/10/1977 of which a copy is at Ex.38 and in

that reply, he has not denied the title of the plaintiff, but he has stated that he has no knowledge as to since when the plaintiff has become an owner of the suit property. So he has taken a dispute with regard to only material date of purchase of the suit property and not with regard to the fact of purchase of property by the plaintiff. From Para 3 of reply Ex.38, it cleary appears that defendant expects that original owners i.e. vendors of the suit property must give him an attornment notice, on sale of property by them to the present plaintiff. It also appears from Para 3 of reply Ex.38 that plaintiff informed the defendant by his notice dt. 22/9/1977 that he (plaintiff) has become an owner of suit property on and from 11/12/1975. The plaintiff has not produced copy of his notice dt. 22/9/1977 but the fact remains that defendant had already come to know that plaintiff has become an owner of the suit property, as admitted by him on or about 7/12/1974. Though no dispute is taken with regard to the title of the plaintiff in reply Ex.38, defendant has taken a dispute for the first time in his written statement Ex.18 that plaintiff was not entitled to legally purchase the suit property and further that sale deed executed by original owners in favour of plaintiff was illegal. Thus, defendant has developed his case in written statement by stating certain facts which were not stated by him in his written reply Ex.38. In view of Sec.109 of the T.P.Act, lessee has no right to challenge the transaction taken place in between his original landlord and the purchaser of the property. Defendant has no right whatsoever to take any dispute with regard to transaction of sale which took place in between original owner and the purchaser. His status is merely a status of a lessee. On sale of property by original owners to plaintiff, the defendant who was lessee of original lessor, became a lessee of the new purchaser and when he was knowing about the purchase of the suit property by plaintiff, around 7/12/1974, there is no reason for defendant to challenge transaction of sale effected by original landlord.

24. It may be noted that for the first time, defendant in his reply Ex. 38 dt. 19/10/1977 denied for he having knowledge of the date as to since when plaintiff has become owner of the suit property. He had filed a standard rent Application No. 3784 of 1977 in Small Causes Court at Ahmedabad on or about 24/10/1977. Copy of that Standard Rent Application No. 3784 of 1977 is given by Shri S.M.Shah in paper book of relevant documents before this matter was taken up for hearing. In this Standard Rent Application, defendant joined present plaintiff as opponent no.1, wherein he has stated

that he had received a notice dated 22/9/1977 from opponent no.1 (present plaintiff) and in that notice, opponent no.1 has informed that he has purchased the property on 11/12/1975, but opponent nos. 2 and 3 i.e. original owners have not given him notice of attornment. As discussed earlier, when defendant had already come to know of the fact that plaintiff has purchased the property from its original owners, question does not arise for attornment notice in view of proviso to First Part of Sect.108 of T.P.Act. In that application, he prayed for fixation of standard rent of the suit property. He did not pray for any relief as to whom he should pay the rent. Absence of such relief with regard to a person to whom rent to be paid by defendant, it clearly suggests that defendant admits that plaintiff is an owner of the suit property. The defendant has not filed any suit under Order 35 of the C.P.Code. If really, defendant had challenged the title of plaintiff in suit property, he would have certainly filed an interpleader suit. Interpleader suit means, a judicial proceeding by which when two parties make a same claim against the third party, rightful claimant is determined. It is not the case of the defendant that original owners have not sold the suit property to plaintiff. He has found fault with transaction of sale of property. On reading first document i.e. written reply Exh.38 dt. 19/10/1977 of defendant, it appears that defendant has nowhere stated that plaintiff has not purchased the property from its owners, and therefore, in absence of such pleading for interpleader, such type of dispute cannot be taken by defendant in his written statement, and when a dispute taken by him, it can certainly be said that he has challenged a title of plaintiff, and therefore, plaintiff's suit squarely falls under Sec. 116 of Indian Evidence Act and on that ground, plaintiff is entitled to possession of the suit property.

25. In view of the discussions made hereinabove, the learnedw Appellate Judges have rightly come to a conclusion that there has been denial of title of plaintiff by the defendant. The learned Appellate Judges have observed in their Judgment that attitude of the defendant appears to be somewhat mischievous as during his cross-examination, he has stated that in fact he wanted to purchase the suit room, and therefore, even if the plaintiff had come to him to demand rent from him, he would not have made the payment of rent to the plaintiff. Thus, the reason behind indirect denial of title of the plaintiff is to the effect that he wanted to purchase the suit property from its original owners. Merely because, plaintiff purchased it, he has advanced his case for

denial of title. Thus, the learned Judges of the Appellate Bench have, after due appreciation of evidence and analysing the evidence led by both the parties, come to a right conclusion that there has been a relationship of landlord and tenant between plaintiff and defendant and further, that there has been a denial of title of the plaintiff by the defendant, and therefore, they have answered Issue Nos. 1 and 2 in affirmative. In view of this fact, plaintiff has become entitled to recover possession of the suit property from the defendant on that count only.

21. Now question comes for second ground of the plaintiff that defendant has become a tenant in arrears of rent for more than six months and that he has neglected to make payment of such rent due within one month from the date of receipt of the notice. In case of RATILAL BALABHAI NAZAR Vs. RANCHHODBHAI SHANKERBHAI AND OTHERS, reported in (1968) 9 GLR 48, following four conditions are set out for bringing a case u/s.12(3)(a) of the Act.

(i) The rent must be payable by the month;

(ii) There must be no dispute regarding the standard rent or permitted increases right upto the expiration of a period of one month from the date of the notice under sec. 12(2) of the Act;

(iii) The rent must be in arrears for a period of six months or more at the date of such notice; and

(iv) The tenant must neglect to make payment of such arrears until the expiration of a period of one month after the date of such notice.

Here in this case, admittedly, the defendant was paying rent at the rate of Rs.10/- per month. It is his case that Municipal Taxes were to be paid by the owner of the property. Thus, there is no dispute with regard to rent at the rate of Rs.10/- per month being monthly payable and therefore, this first condition is satisfied by the plaintiff.

22. Now second condition is with regard to " no dispute regarding the standard rent or "permitted increases " right upto the expiration of period of one month from the date of the notice under Sec.12(2) of the Act. Here in this case, plaintiff by his notice dt. 22/9/1977 terminated tenancy of the defendant. The

defendant has admitted in his written reply Ex.38 dt. 19/10/1977 that he received said notice dt. 22/9/1977. In reply to that notice Ex.38, there is no dispute with regard to standard rent. It appears from the record that defendant filed an application for fixation of standard rent bearing Application No. 3784 of 1977 on or about 24/10/1977. The defendant submitted one application dtd.. -10-1980 for permission to amend written statement filed earlier in the suit, of which copy has been furnished to this Court for perusal by Shri S.M.Shah. On reading that application, it is clear that that Standard Rent Application No. 3784 of 1977 was withdrawn. It is the case of the defendant that without prejudice to his dispute with regard to standard rent, he withdrew that Standard Rent Application. Defendant filed his written statement Ex.13 on or about 2/5/1978, wherein no dispute with regard to standard rent is taken by defendant. It appears from the record that for the first time, defendant, by submitting his application for permission to amend his earlier written statement, raised a dispute with regard to standard rent in the month of October, 1980. As said earlier, plaintiff terminated tenancy by suit notice dt.22/9/1977, and therefore, it clearly appears from record that defendant did not take any dispute with regard to standard rent within one month from 22/9/1977. It is not clear from evidence as to on which exact date, the defendant received notice dt. 22/9/1977 but at the same time, it is not also the case of the defendant that he has taken a dispute with regard to standard rent within one month from the date of receipt of said notice. As per his case, for the first time, he took dispute with regard to standard rent by filing standard rent Application No. 3784 of 1977 on or about 24/10/1977, but as admitted by him, that application was withdrawn by him but that withdrawal of application was conditional by keeping the subject of dispute with regard to standard rent alive for future. He has not produced certified copy of order passed below withdrawal Purshis passed by the Court, and therefore, there is nothing on record to show that he withdrew that application for standard rent by keeping subject of dispute with regard to standard rent alive for future, and therefore, the learned Judges of both the Courts below have rightly come to a conclusion that there was no dispute with regard to standard rent within one month from the date of receipt of notice.

23. The third condition for Sec.12(3)(a) of the Act is to the effect that rent must be in arrears of rent for a period of six months or more at the date of such notice. Defendant has admitted in his evidence that rent

was due for about eight months prior to date of purchase of property by plaintiff. Plaintiff purchased suit property on 7/10/1974, and therefore, as per case of defendant, rent was due for the period from 7/2/1974 to date of purchase of suit property i.e. 7/10/1974. It is also not the case of the defendant that after purchase of property by plaintiff, he paid rent to plaintiff. Plaintiff, by giving notice dt. 22/9/1977, terminated tenancy on the ground that defendant was a tenant- in -arrears of rent for more than six months. Thus, defendant was in arrears of rent for the period from 7/2/1974 to reply of notice Ex.38 dated 19/10/1977, and therefore, from record, it appears that he was in arrears of rent for more than six months, and therefore, this third condition is also satisfied.

24. Now fourth condition is with regard to negligence of defendant in making payment of such arrears of rent within one month from the date of such notice. Defendant has admitted in his evidence that after giving a notice Ex.31 by plaintiff, neither he remitted the amount of rent due to plaintiff by Money Order, nor he went to plaintiff to pay the rent. The grounds stated by him for non-payment is that he did not accept plaintiff as his landlord. As said earlier, the learned Judges of Appellate Bench have observed in their Judgment that even though defendant knew of the transactions, he did not accept the plaintiff as his landlord simply because he wanted to purchase the suit property, as deposed to by him. Thus, the reason assigned by defendant for nonpayment of rent will not entitle him to bring his case outside the scope of Sec.12(3)(a) of the Act, and thus, he is not entitled to any protection from eviction under General Provisions of sub-section (1) of Sec.12 of the Act. Admittedly, defendant has not paid the arrears of rent for more than six months on the date of service of notice. In case of SARABHAI JESINGBHAI CHOKSHY vs BABJLAL ALIAS CHANDUJLAL LALLUBHAI DARJI reported in , reported in (1972) 13 GLR P. 870 it has been held that a strong presumption of neglect might arise from the factum of nonpayment of arrears of rent by a tenant within the prescribed period of one month, and it would be on the tenant to rebut that presumption by leading evidence and proving conclusively circumstance which may lead the Court to hold that even though nonpayment is established, there was no negligence notwithstanding the nonpayment. Thus, the learned Judges of Appellate Bench have rightly come to the conclusion that these four conditions to prove the case under Sec.12(3)(a) of the Act, are proved by the plaintiff.

25. On this point, Shri S.M.Shah has cited one unreported Judgment of NOMANBHAI TAIYABALI KOKAWALA Vs. SAFIAYABAI TAIYABALI, of Hon'ble Supreme Court rendered in Civil Appeal No. 2926 of 1979 decided on 12th October, 1979. A question before the Hon'ble Supreme Court was whether more arrears of rent per se means negation of readiness and willingness to pay and therefore, involves eviction. Looking to the facts and circumstances of that particular case on hand, the Hon'ble Supreme Court held that there should be a further mental element, a negative stance of the tenant that is to say he is not ready and willing to pay and this negative fact has to be made good by the landlord. In that case, looking to the facts and circumstances, the Hon'ble Supreme Court held that in view of facts, it was sufficient to show the readiness and willingness on the part of the tenant required by Sec.12(1) of the Bombay Rents Act. Here in this case, the facts and circumstances are altogether quit different than that of a cited case, and therefore, cited authority is not applicable to the present case looking to the peculiar facts and circumstances of this present case.

26. Shri Shah has cited one authority of UDOMAL NATHUMAL AND ANR VS. PREMCHAND TRIKAMDAS BASWANI, reported in (1980) 21 G.L.R. 869, wherein it has been held that-

> "Before passing a decree under Sec.12(3)(a) of the Act, negligeence on the part of the tenant to make payment must be established".

There cannot be any controversy on the aforesaid legal position settled in cited case.

27. Here in this case, though within the period of two to three months from the date of purchase of the property, defendant had already come to know about the fact that plaintiff has purchased the suit property, he failed to make payment of arrears of rent only on the ground that he did not accept the plaintiff as his landlord because he wanted to purchase the suit property. This ground itself shows that he did not want to make payment of rent under a ground which was not bonafide and genuine, and therefore, this authority is also not helpful to the plaintiff.

28. As against aforesaid authority, Shri A.H.Mehta, learned advocate for the revision opponent has cited an authority of D. SINGARAJ vs. MURTHY, reported in JT

2000 (8) SC 273. The facts of this present case are somewhat similar to that of case cited by Mr. A.H.Mehta. In that case, appellant was the tenant whereas the respondent was the landlord. Originally, suit premises of that case was owned by Selvi Arokiya Mary. On or about 20th March, 1986, that property was transferred in favour of the respondent i.e. landlord of that suit. He served notice on tenant on 29th May, 1987, intimating him (tenant) that he has purchased the property and he has become an owner thereof and tenant is required to pay rent to him (plff). In that case, before the notice could be served on the tenant, tenant filed one case No.4 of 1987 under Sec.9 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969. In that proceedings, the Authorised Officer passed an order on 22nd March, 1988, directing the tenant to deposit rent from January, 1987 to November 1987 and subsequently, on 29th March, 1988, that authorised officer further passed an order to deposit rent for the period beginning from December, 1987 upto March, 1988 and also for subsequent months. The tenant in compliance of the aforesaid order, deposited a sum of Rs. 1,615/-, Rs.600/- and Rs.150/-, respectively and thereafter, he continued to deposit the rent. Subsequently that application was withdrawn by the tenant.

30. Here in our present case, immediately after service of notice by the plaintiff, defendant filed an application for fixation of standard rent which was ultimately withdrawn by him. In that cited case, a defence was taken that tenant had deposited the amount as per the order of the authorised officer passed in proceedings bearing No.4 of 1987, and therefore, he cannot be treated to be a defaulter. In that case, it was held that it was not open to the tenant to take resort to Sec.9 of the Act unless there is a valid ground. It was further held that tenant had never tendered the rent to the landlord despite he was informed by the landlord that he has become the owner of the premises. Such a deposit made by the plaintiff before the authorised officer was not a valid deposit and would not absolve him from suffering an order of evicton for committing default in making payment of arrears of rent. In that case, the Hon'ble Supreme Court observed that both Appellate Court and High Court have recorded consistent and concurrent finding of fact that tenant had committed wilful default in making payment of arrears of rent, and therefore, the Hon'ble Supreme Court was not inclined to take a different view.

31. Here in this case, defendant neither deposited

the amount of rent in the Court in the proceedings initiated by him, nor he paid the rent to the landlord, though plaintiff informed the defendant by his notice dated 22/9/1977 that he has become the owner of the suit premises, and therefore, the authority cited by Shri A.H.Mehta is applicable to this present case and following the legal position settled in that decision, this Court also comes to a conclusion that defendant was a tenant in arrears of rent for more than six months and that he has neglected to make payment of such rent due within one month from the date of notice under Sec.12(2) of the Act.

32. Except the above contentions, no other contention has been taken by Shri S.M.Shah, the learned advocate for the Revision -Petitioner.

33. In view of what is discussed hereinabove, the learned Judges of the Appellate Bench have rightly come to the conclusion that plaintiff has ably proved his case against defendant for eviction of suit premises on the ground falling under Sec.12(3)(a) of the Act, and therefore, whatever arguments advanced by Shri S.M.Shah on this point against the case falling under Sec.12(3)(a) of the Act are negatived by this Court and on that score, this Civil Revision Application deserves to be dismissed.

34. In view of the discussions made hereinabove, this court is of the clear view that Judgments of the courts below are according to law and no interference is necessary by this Court and hence this Civil Revision Application is completely devoid of merits and it deserves to be dismissed. Accordingly it is dismissed with costs throughout. Rule discharged. Ad-interim stay granted on 28-12-1987 shall stand vacated forthwith.

Date: -10-2000. (H.H.MEHT,J.)
ccshah